STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-59771
Issue No.: 3055
Case No.: [redacted]
Hearing Date: October 29, 2013
County: Wayne #17

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Depar tment of Human Services (Department), this matter is before the under signed Administrative Law J udge pursuant to MCL 400.9, and in acc ordance with Titles 7, 42 and 45 of the Code of Federal Regulat ion (CF R), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a teleph one hearing was held on Tuesday , October 29, 2013 from Lansing, Michigan. T he Depar tment was r epresented by [redacted] [redacted] Agent # [redacted] Regulation Agent of the Office of Inspector General (OIG).

☐ Participants on behalf of Respondent included: .

☒ Respondent did not appear at the heari ng and it was held in Res pondent's absence pursuant to 7 CF R 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Cod e R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
   ☐ Family Independence Program (FIP) ☐ State Disability Assistance (SDA)
   ☒ Food Assistance Program (FAP) ☐ Ch ild Dev elopment a nd Care (CDC)
   ☐ Medical Assistance (MA)
   benefits that the Department is entitled to recoup?

2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving
   ☐ Family Independence Program (FIP)? ☐ State Disability Assistance (SDA)?
   ☒ Food Assistance Program (FAP)? ☐ Child Development and Care (CDC)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on July 22, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG ☒ has ☐ has not requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits issued by the Department.

4. Respondent ☒ was ☐ was not aware of the responsibility of the proper usage of a Michigan Bridge Card.

5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

6. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2011 through April 30, 2012 (fraud period).

7. During the fraud period, Respondent was issued $[redacted] in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to $0 in such benefits during this time period.

8. The Department alleges that Respondent received an OI in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits in the amount of $[redacted]

9. This was Respondent's ☒ first ☐ second ☐ third alleged IPV.

10. A notice of hearing was mailed to Respondent at the last known address and ☒ was ☐ was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

☐ The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

☒ The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

☐ The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

☐ The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

☐ The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
    - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is $1000 or more, or
    - the total OI amount is less than $1000, **and**
        - the group has a previous IPV, or
        - the alleged IPV involves FAP trafficking, or
        - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or

- the alleged fraud is committed by a state/government employee.

BAM 720, p. 10.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700, p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710, p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Respondent used her/his FAP benefits at [redacted], which was a store that was identified and convicted of FAP benefit trafficking. Department Exhibit 18-36. The Respondent was a Client identified during the investigation with transaction histories of greater than $8 to $9 at the store that exceeded the normal dollar transaction amount of a store that size with the limited number of items available for sale. Department Exhibit 37-38. Therefore, the Department has met its burden that the Respondent did not utilize proper usage of a Michigan Bridge Card. As a result, the Respondent received an overissuance of FAP benefits of $ [redacted] that the Department is required to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent ☒ did ☐ did not commit an IPV by clear and convincing evidence.

2. Respondent ☒ did ☐ did not receive an OI of program benefits in the amount of $[redacted] from the following program(s) ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA.

The Department is ORDERED to

- ☐ delete the OI and cease any recoupment action.
- ☒ initiate recoupment procedures for the amount of $ [redacted] in accordance with Department policy.
- ☐ reduce the OI to $ for the period , and initiate recoupment procedures in accordance with Department policy.

☒ It is FURTHER ORDERED that Respondent be disqualified from
☐ FIP ☒ FAP ☐ SDA ☐ CDC for a period of
☒ 12 months. ☐ 24 months. ☐ lifetime.

Carmen G. Fahie

Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 14, 2013

Date Mailed: November 14, 2013

NOTICE: The law pr ovides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court fo r the county in which he/she lives.

CGF/pw

cc: [redacted]